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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,858	11/26/2003	Prathyusha K. Salla	132958XX-A/YOD GEMS:0236	8733
7590	05/18/2007	Patrick S. Yoder Fletcher Yoder P.O. Box 692289 Houston, TX 77269-2289	EXAMINER MANUEL, GEORGE C	
			ART UNIT 3762	PAPER NUMBER
			MAIL DATE 05/18/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/723,858	SALLA ET AL.	
Examiner	Art Unit		
George Manuel	3762		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1)  Responsive to communication(s) filed on 30 May 2006.  
2a)  This action is **FINAL**.                  2b)  This action is non-final.  
3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

- 4)  Claim(s) 1-72 is/are pending in the application.  
4a) Of the above claim(s) 1-20,33-52,65,66 and 68-70 is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 21-32, 53-64, 67, 71, 72 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## **Application Papers**

- 9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
    1.  Certified copies of the priority documents have been received.  
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
    3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## **Attachment(s)**

- 1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_\_  
  
4)  Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_\_  
5)  Notice of Informal Patent Application  
6)  Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 21-22, 24-32, 53-54, 56-64, 67 and 71-72 are rejected under 35

U.S.C. 102(b) as being anticipated by Sano (U.S. Patent No. 5,701,897).

Sano teaches of an ultrasonic diagnosis apparatus and image displaying system for monitoring the movement of an organ comprising acquiring an electrocardiograph (13) which is electrical data representative of cardiac motion, an acceleration calculator (55) for acquiring non-electrical data representative of cardiac motion and an image system which can include data representative of respiratory motion (col. 7 lines 50-58). The system as taught by Sano is capable of detecting one or more periods of minimal motion (col. 2 lines 47-52).

The claim construction of claim 67 is presumed to invoke 35 U.S.C. 112, 6<sup>th</sup> paragraph. Based on Applicant's specification means for acquiring at least one set of electrical data representative of cardiac motion comprises an electrocardiogram; at least one set of non-electrical data representative of cardiac motion comprises ultrasonic sensors; and one or more sets of data representative of respiratory motion comprises proximate muscular contractions. These features are clearly anticipated by Sano.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 23 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sano (U.S. Patent No. 5,701,897) as applied to claims 21-22, 24-32, 53-54, 56-64 and 71-72 above.

Sano teaches that the system is capable of being applied to different types of organs (col. 38 lines 56-60), and thus it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the system as taught by Sano to include data of one or more proximate organs. Therefore, it would have been obvious to one having ordinary skill in the art to modify the system as taught by Sano to have the limitations of claims 23 and 55.

***Response to Arguments***

Applicant's arguments filed 5/30/06 have been fully considered but they are not persuasive. Applicant's assertion that one or more sets of motion data representative of respiratory motion is lacking from the Sano reference is without merit. Sano clearly suggests motion data comprising an ultrasonic diagnosis apparatus in which velocities of movement of an organ in motion of an object, such as a cardiac muscle of a heart and a blood vessel wall, are obtained and displayed and if necessary, on the basis of the velocities, other physical values representing conditions of the movement are

calculated and displayed. Respiration is a physical value representing the condition of an organ (lung or diaphragm) in motion and exhibiting a velocity of movement.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Manuel whose telephone number is (571) 272-4952.



George Manuel  
Primary Examiner  
Art Unit: 3762